

CLEMENT J. O'NEILL

IBLA 74-275

Decided September 23, 1974

Appeal from decision of the Nevada State Office, Bureau of Land Management, denying a petition to reinstate terminated oil and gas lease Nev-066912-H.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time can be reinstated only when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Clement J. O'Neill, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Clement J. O'Neill appeals from a decision by the Nevada State Office, Bureau of Land Management, dated March 20, 1974, denying his petition for reinstatement of oil and gas lease Nev-066912-H, a nonproducing lease which terminated by operation of law for failure to make timely payment of the annual rental, due February 1, 1974. We affirm the decision.

[1] Section 31 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 188(b) (1970), provides that a nonproducing oil and gas lease will terminate if the annual rental has not been received on or before the anniversary date of the lease. The lease may be reinstated only if the full amount owed has been paid or tendered within 20 days of the anniversary date, and if it has been shown

to the satisfaction of the Secretary that the failure to make timely payment "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee * * *." 30 U.S.C. § 188(c) (1970). A Departmental regulation says that:

[r]easonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

43 CFR 3108.2-1(c)(2).

The record shows that appellant's envelope containing his lease payment was sent by air mail and was postmarked in San Diego, California, on February 2, 1974. It was received in the Bureau's State Office in Reno, Nevada, on February 4, 1974. Appellant contends, nonetheless, that he exercised "reasonable diligence" in mailing the payment. He asserts:

* * * On January 30, 1974 I executed my personal check payable to the Bureau of Land Management and gave that check together with the Notice of Payment Due to my secretary, with instructions to mail them on that date to your office. In the normal course of our business practice, that envelope would have been mailed on January 30, 1974. I have reviewed the matter with my secretary and she does not have any specific recollection of mailing that payment later than January 30, 1974. In the normal course of our business all checks are mailed on the date written and all mail written is deposited by my secretary in a nearby mailbox at the conclusion of each day's business.

The only possible explanation I have is that the mail was not picked up from that mailbox until late Friday afternoon and postmarked the following day.

We find appellant's showing of "reasonable diligence" to be unpersuasive. Even assuming that the particular envelope in question was deposited in the mail at the conclusion of the day's business on January 30, appellant has not demonstrated that he took into account "normal delays in the collection, transmittal, and delivery of the payment." No evidence has been introduced which

would indicate whether in the normal course of postal operations mail deposited after office hours in the mailbox customarily used by appellant would have been collected, transmitted to the post office, and postmarked before the following day, January 31, which was one day prior to the due date. This Board in circumstances where the appellant offered no other explanation or reasons to substantiate "reasonable diligence" has held that a lease payment contained in an envelope postmarked one day prior to the due date was not mailed sufficiently in advance to account for normal delays in postal handling. Minntex Oil Co., 17 IBLA 16 (1974); Gordon R. Epperson, 16 IBLA 60 (1974); Maurice E. Mosher, 14 IBLA 287 (1974); John L. Stambaugh, 11 IBLA 27 (1973); Charles E. Reynolds, 9 IBLA 300 (1973); Louis Samuel, 8 IBLA 268 (1972).

Appellant has presented no reasons which would show that the failure to pay the rental on time was justifiable. Minntex Oil Co., *supra.*; Louis Samuel, *supra.*

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Nevada State Office denying the petition for reinstatement is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

